IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3079 OF 2005

IN

SUIT NO.2812 OF 2005

1.Viloma Nagindas Vora & another. ...Plaintiffs.

vs.

1.Vikas R. Oberoi & others. ...Defendants

Mr.M.P.S.Rao i/b. S.R.Saudagar, for Plaintiffs.

Mr.B.B.Saraf i/b. Ranjit Dharmadhikari, for Defendant nos. 1 and 2.

Mr.D.D.Madan with J.S.Kini, for Defendant nos.3 & 4.

CORAM: D.K.DESHMUKH,J.

DATED: 20th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. The plaintiffs have filed the

suit seeking declaration that the plaintiffs are the owners of car parking space under stilt bearing no.10 situated at 58,JVPD Scheme, 12th North South road, Juhu, Vile Parle, Mumbai. On the basis of their claim that they are owners of car parking space no.10, the plaintiffs are claiming interim relief in relation to that parking space. According to the plaintiffs, after the building was constructed there was final allotment agreement entered into between the original owner Suresh Bhailal Patel, Defendant nos. 3 and 4 and defendant no.1. According to the plaintiffs, they have purchased the flat about which there is no dispute in the suit and the car parking space no.10 from the defendant no.1 Vikas Oberoi. According to the plaintiffs, there was final allotment agreement between the owner Suresh Patel, defendant nos. 3 and 4 and the defendant no.1 dated 11.9.2002. As per that agreement, the car parking space no.10 was allotted to defendant no.4. But on the same day,

according to the plaintiffs, an oral agreement was reached between the parties as a result of which the car parking space no.10 was allotted to defendant no.1. On the same day, the defendant no.1 entered into a memorandum of understanding with the plaintiffs and transferred the car parking space no.10 to the plaintiffs and therefore, according to the plaintiffs, the plaintiffs are the owners of the car parking space no.10. It is common ground that so far as the final allotment agreement is concerned, according to that agreement the defendant no.1 does not become the owner of car parking space no.10. The defendant no.1 has filed an affidavit. In that affidavit, he has stated that after the final allotment agreement dated 11.9.2002 was entered into between the parties who have been named above, on the same day oral agreement and understanding was arrived at between the defendants whereby the allotment of car parking space was changed and now car parking

space no.10 which was allotted to defendant no.4 under the written final allotment agreement was allotted to defendant no.1. The plaintiffs rely on the oral agreement alleged to have been entered into between the parties on 11.9.2002 changing the allotment of car parking space that was arrived at in the final allotment dt. 11.9.2002 which is a written agreement. Thus, the case of the plaintiffs is entirely based on the oral agreement which is supposed to have been arrived at between the parties to the final allotment agreement after the final allotment agreement. The document which, according to the plaintiffs, confers title on them is memorandum of understanding arrived at on the same date as the final allotment agreement was arrived at between the parties and the alleged oral agreement was entered into. Therefore, if there was really an oral agreement whereby the allotment of car parking space mentioned in the final allotment agreement dated 11.9.2002 was

changed in the memorandum of understanding reduced into writing on the same day, the defendant no.1 would not have referred to the final allotment agreement dated 11.9.2002 in relation to car parking space No.10, but would have referred to the agreement of final allotment dated 11.9.2002 as modified by the alleged oral agreement. But perusal of clause 24 of that memorandum of understanding dated 11.9.2002 between the plaintiff and defendant no.1 shows that the defendant no.1 has referred to the agreement of final allotment dated 11.9.2002 and not to any oral agreement. The final conveyance, according to the plaintiffs, was executed in his favour by the defendant no.1 on 7.4.2003. Clause 21 of this agreement shows that again a reference is made to agreement of final allotment dated 11.9.2002 which is a written agreement and not to any oral agreement modifying that allotment. Therefore, if one goes by the material produced on record, except the statement made by the

plaintiffs and the defendant no.1 that there was an oral agreement by which the written agreement in relation to the allotment of car parking space was modified, there is nothing to support the case of the plaintiffs. On the contrary, the document on which the plaintiffs themselves are relying goes to show that defendant no.1 was not the owner of car parking space no.10. The document on which the plaintiffs are relying to claim title in car parking space no.10 shows that not only that there is no reference to any oral arrangement on the contrary it refers to written agreement between the parties dated 11.9.2002, and therefore, prima facie at this stage it cannot be said with any amount of certainty that plaintiffs become the owners of the car parking space no.10. The plaintiffs have not therefore, made out a strong prima facie case that they are likely to get decree of declaration that they are the owners of car parking space no.10 and therefore, the plaintiffs are not entitled to any

interim relief. The learned Counsel appearing on behalf of plaintiffs argued that the oral agreement has also been referred to by defendant nos.3 and 4. But perusal of the affidavit filed by the defendant nos. 3 and 4 shows that the oral agreements that have been referred to are the oral agreements which were according to them reached between the parties before the final allotment arrangement was arrived at. I have not been pointed out that the defendant nos. 3 and 4 claimed that there was an oral agreement reached for modifying final allotment agreement. It was also submitted that defendant nos. 3 and 4 are also occupying some car parking spaces to which they are not entitled to and therefore, the Court should make some interim arrangement in relation to the car parking spaces. The entitlement of the plaintiffs for any interim order in their favour or for any interim arrangement depends on the plaintiffs making out strong prima facie case that they are likely to get final decree in their

favour. Merely because the defendants are using more than one car parking space that may or may not be entitled to, the plaintiffs does not become entitle to any interim order.

2. Taking overall view of the matter therefore, the plaintiffs do not have strong prima facie case and therefore, the plaintiffs are not entitled to any interim relief. The notice of motion is disposed of.

At the request of plaintiffs it is directed that ad-interim order will continue to operate for a period of four weeks.